



Department of Planning, Housing, & Community Development

Mayor, Richard C. David
Director, Dr. Juliet Berling

Staff Report Use Variance

Date:	May 14, 2015
Address:	33 Riverside Drive
Tax ID#:	160.63-1-23
Case Number:	2015-08
Zoning:	Single Unit Dwelling District (R-1)
Copies:	B. Seachrist, T. Costello, Leo O'Connor, File

REVIEW REQUESTED

This application would establish an investment office within an existing converted residence building at 33 Riverside Drive, Binghamton, NY. The project would include fully converting the structure, which previously staged a doctor's office in the basement and residential living space on the first and second floors, into an investment office. Site improvements include striped customer and employee parking and improved landscaped areas.

The property is zoned R-1 One Unit Dwelling District. Business offices are not permitted in the R-1 District; therefore a use variance is required from the Zoning Board of Appeals.

In granting a **Use Variance**, the Zoning Board of Appeals must find the applicant has adequately demonstrated the following:

- (a). **Economic deprivation:** That under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question. Deprivation must be established by competent financial evidence;
- (b). **Unique circumstances:** That the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood;
- (c). **Neighborhood character:** That granting the variance will be in harmony with the spirit and intent of this ordinance and will not alter the essential character or quality of the neighborhood, endanger public health or safety, or substantially diminish or impair property values in the neighborhood.
- (d). **Self-created hardship:** That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in granting a use variance, shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

B. STAFF FINDINGS

Planning Staff has the following findings:

- 1. The Zoning Board of Appeals must determine whether an undesirable change will be produced in the character of the neighborhood.**

The subject property is located on Riverside Drive. Though this fairly long street consists of mainly residential structures, the area immediately surrounding the subject property is mostly being used as commercial by professional offices. This property was previously utilized as a converted residence with a doctor's office in the basement and residential living space on the first and second floors.

- 2. The Zoning Board of Appeals must determine whether the variances requested are substantial.**

- 3. The Zoning Board of Appeals must determine whether the requested variances will have an adverse impact on the physical or environmental conditions in the neighborhood or district.**

Although the granting of the Use Variance itself will not have an adverse impact on the neighborhood, the site plan, as proposed, will. The driveway does not have the capacity for two-way traffic and will lead to conflicts between vehicles entering and exiting the parking area. This issue will be resolved by the Planning Commission before Series A Site Plan Approval is granted.

- 4. The Zoning Board of Appeals must determine whether the alleged difficulty was self-created.**

C. RECOMMENDED CONDITIONS OF APPROVAL

If the Zoning Board approves the proposed variance Staff recommends the following conditions of approval:

- 1. That there be no external alteration of the dwelling that changes the character and appearance thereof as a dwelling**
- 2. That deliveries shall not be made before 7:00am or after 9:00pm**

SITE REVIEW

The property known as 33 Riverside Drive is located midblock between Oak Street and Murray Street. The site is improved with a two story converted residence structure. The building was previously utilized by a doctor's office in the basement and residential living space on the floors above.

Land use in the immediate vicinity of 33 Riverside Drive consists of mostly commercial uses. The site is adjoined by professional offices to the east and west. There are professional offices across the street to the north. Directly behind the property, separated by a privacy fence, is the nearest residential structure.

PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY

42 Murray Street: In 2013, the Zoning Board of Appeals approved the area variance for the

construction of a carport on a residential lot that contains an existing garage in the R-2, Residential One and Two Unit Dwelling District.

31 Seminary Avenue: In 2009, the Zoning Board of Appeals denied area variances for minimum side setback, minimum total side setbacks, minimum rear setback and maximum lot coverage in the R-2, Residential One & Two Unit Dwelling District.

48-50 Walnut Street: In 2008, the Zoning Board of Appeals granted an area variance for lot size and denied an area variance for off-street parking and fence height.

63 Walnut Street: In 1996, the Zoning Board of Appeals denied area and use variances to allow the conversion of an apartment into an attorney's office.

100 Murray Street: In 1984, the Planning Commission granted a Special Use Permit to pave the rear of the property for an off-street parking area.

COMPREHENSIVE PLAN CONSISTENCY

The future land use map in the City's 2014 Comprehensive Plan identifies this site as "institutional". This project is consistent with that land use classification. This project also would be in line with recommendation 2.4 in the land use and zoning chapter which states that the size of some larger homes limits the opportunities for their reuse and the residential market is not strong enough for single-family buyers to take on these homes. Allowing professional offices, that will have low impact on surrounding neighborhoods, to utilize these large houses would benefit the area.

ENVIRONMENTAL IMPACT

The applicant's proposal is a SEQR **Unlisted** Action. The Zoning Board of Appeals should be the lead agency to determine any environmental significance related to the use variance.

1. Motion to determine what type of action:
 - a. Type I
 - b. Type II
 - c. **Unlisted**
2. Determine Lead Agency and other involved agencies.
3. After the Public Hearing, Determination of Significance. The Zoning Board of Appeals is responsible for completing Part 2 & Part 3 of the Environmental Assessment Form (EAF)– see below.

SEQR EAF Part 2 - Impact Assessment. The Lead Agency (ZBA) is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the ZBA. When answering the questions the ZBA should be guided by the concept "Have our responses been reasonable considering the scale and context of the proposed action?"

	NO, OR SMALL IMPACT MAY OCCUR	MODERATE TO LARGE IMPACT MAY OCCUR
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Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
Will the proposed action result in a change in the use or intensity of use of land?		
Will the proposed action impair the character or quality of the existing community?		
Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
Will the proposed action impact existing: A. public / private water supplies? B. public / private wastewater treatment utilities?		
Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		
Will the proposed action result in an increase in the potential for erosion, flooding or drainage Problems?		
Will the proposed action create a hazard to environmental resources or human health?		

EAF Part 3 - Determination of significance. For every question in Part 2 that answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- If the ZBA determines that the proposed action may result in one or more potentially large or significant adverse impacts an environmental impact statement is required.
- The ZBA may issue a Negative Declaration if it is determined that the proposed action will not result in any significant adverse environmental impacts.

ENCLOSURES

Enclosed are the site plan, site photographs, the application, and a letter from Leo O’ Connor to the ZBA describing his project.